

**EVALUATION OF THE CERTIFICATE OF NEED APPLICATION SUBMITTED BY
PROLIANCE SURGEONS, INC. PS PROPOSING TO ESTABLISH AN AMBULATORY
SURGERY CENTER IN KIRKLAND**

PROJECT DESCRIPTION

Proliance Surgeons, Inc., P.S. (PS, Inc.) is a Washington State corporation comprised of care centers, ambulatory surgery centers (ASCs), physical therapy, occupational therapy, and magnetic resonance imaging (MRI) facilities. Of these various types of healthcare facilities, only the ASCs are subject to state survey and regulations. PS, Inc. manages and operates 33 physician offices, which are located within King, Pierce, Skagit, and Snohomish counties. Of the 33 physician offices, six have ASCs associated with them. The chart below illustrates the six existing PS, Inc. ASCs. [source: CN historical files and PS, Inc. website]

County	Surgery Centers/City Location
King	Evergreen Orthopedic Surgery Center/Kirkland
	Evergreen Surgical Clinic/Kirkland
	Issaquah Surgery Center/Issaquah
	Valley Orthopedic Associates/Renton
Skagit	Skagit Island Orthopedic Surgery Center/Mount Vernon
Snohomish	Edmonds Center for Outpatient Surgery/Edmonds

This application focuses on the ASC located in Kirkland, known as Evergreen Orthopedic Surgery Center (in bold above). On April 4, 2003, the department granted an exemption to PS, Inc. for the establishment of this ASC located at 12911 120th Avenue Northeast in the city of Kirkland, within east King County. The exempt ASC has three operating rooms and received Medicare certification in July 2003. [source: CN historical files and Application, pp2 & 8]

As an exempt ASC, only those physicians part of the Proliance corporation are allowed access to the ASC. Currently, the surgeries performed at Evergreen Orthopedic Surgery Center are all orthopedic. The fourteen Proliance physicians that perform surgeries at the exempt ASC are shown below. [source: Application, p3]

Richard L Angelo, MD	James R. Robbins, MD
David S. Badger, MD	Jeff L. Stickney, MD
James A. Champoux, MD	James D. Swenson, MD
Robin Fuchs, MD	Edward R. North, MD
John K. McCormick, MD	Steven L. Reed, MD
Craig M. McAllister, MD	Steven D. Sun, MD
Gregory J. Norling, MD	Loryn P. Weinstein, MD

For this project, there are three main entities—Evergreen Sun Enterprises, Inc.; Evergreen Orthopedic Surgery Center, LLC; and Proliance Surgeons, PS. Following is a brief description of the roles and responsibilities for all three entities: [source: Application, pp6-8; and June 12, 2006 supplemental information, p3]

Evergreen Sun Enterprises, Inc.

Evergreen Sun Enterprises (ESE) is the landlord that developed the building at 12911 120th Avenue Northeast in Kirkland where the ASC is located. ESE is a Washington State corporation.

Evergreen Orthopedic Surgery Center, LLC

This limited liability corporation is owned by ten of the fourteen physicians identified on page 1.¹ Evergreen Orthopedic Surgery Center, LLC (EOSC) entered into a long-term lease agreement with Evergreen Sun Enterprises for the space, equipped the ASC, developed the tenant improvements, and then sub-let the ASC to Proliance Surgeons, PS.

Proliance Surgeons, Inc.

For this project, Proliance Surgeons (PS, Inc.) is the applicant. Proliance Surgeons is a Washington State professional service corporation that sub-leases the ASC from Evergreen Orthopedic Surgery Center, LLC. All business functions, including management and billing, for the ASC are currently and will continue to be conducted by Proliance Surgeons. This entity has a CEO that reports directly to an 8-member board of directors.

This application proposes to open Evergreen Orthopedic Surgery Center to other physicians that are not part of the Proliance Corporation. PS, Inc. indicates that if this project is approved, EOSC would continue to offer at least orthopedic and general surgeries. [source: June 10, 2006, supplemental information, p3]

When an exempt ASC is established within twelve months before an application is submitted, the department requires the applicant to identify the capital costs for its establishment. Those costs are then used to determine the estimated capital expenditure of the project, even though the costs may already be expended. As previously stated, Evergreen Orthopedic Surgery Center became operational in July 2003. While PS, Inc. identified the costs to establish the exempt ASC to be \$3,643,275, given that the ASC has been operational for three years, the department will consider the capital costs to be zero. [source: CN historical files]

APPLICABILITY OF CERTIFICATE OF NEED LAW

This project is subject to Certificate of Need review as the establishment of a new health care facility under the provisions of Revised Code of Washington (RCW) 70.38.105(4)(a) and Washington Administrative Code (WAC) 246-310-020(1)(a).

APPLICATION CHRONOLOGY

November 21, 2005	Letter of Intent Submitted
March 14, 2006	Application Submitted
March 14, 2006	Department's Pre-Review Activities
through May 26, 2006	<ul style="list-style-type: none">• screening activities and responses
June 2, 2006	Department Begins Review of the Application
	<ul style="list-style-type: none">• public comments accepted throughout review
July 19, 2006	Public Hearing Conducted/End of Public Comment

¹ The four physicians with no ownership interest are: Richard L. Angelo, Robin Fuchs, Jeff L. Stickney, and Loryn P. Weinstein.

APPLICATION CHRONOLOGY (continued)

August 3, 2006	Rebuttal Documents Received at Department ²
September 18, 2006	Department's Anticipated Decision Date
November 14, 2006	Department's Actual Decision Date

AFFECTED PERSONS

Throughout the review of this project, two entities sought and received affected person status under WAC 246-310-010:

- Evergreen Healthcare, an acute care hospital located in Kirkland
- Evergreen Surgery Center, LLC, an ambulatory surgery center owned by Evergreen Healthcare

SOURCE INFORMATION REVIEWED

- Evergreen Orthopedic Surgery Center's Certificate of Need Application submitted March 14, 2006
- Evergreen Orthopedic Surgery Center's supplemental information dated May 26, 2006 and June 12, 2006
- Public comment received throughout the review of the application
- Public hearing documents received at the July 19, 2006, public hearing
- East King County ASC and/or operating room utilization survey responses
- Historical charity care data obtained from the Department of Health's Office of Hospital and Patient Data Systems (2002, 2003, and 2004 summaries)
- Office Financial Management updated population data released June 29, 2006
- Licensing and/or survey data provided by the Department of Health's Office of Health Care Survey
- Comprehensive Hospital Abstract Reporting System (CHARS) data obtained from the Department of Health's Office of Hospital and Patient Data Systems
- Data obtained from the Medical Assistance Administration concerning Medicaid contracts
- Certificate of Need Historical files

CRITERIA EVALUATION

To obtain Certificate of Need approval, the applicant must demonstrate compliance with the criteria found in WAC 246-310-210 (need); 246-310-220 (financial feasibility); 246-310-230 (structure and process of care); 246-310-240 (cost containment) and WAC 246-310-270 (ambulatory surgery).³

CONCLUSION

For the reasons stated in this evaluation and agreement to the following term, Proliance Surgeons, Inc.'s application is approved to establish an ambulatory surgery center in the city of Kirkland within King County:

² There were no rebuttal comments submitted related to this project.

³ Each criterion contains certain sub-criteria. The following sub-criteria are not relevant to this project: WAC 246-310-210(3), (4), (5), and (6); WAC 246-310-220(3); and WAC 246-310-240(2) and (3).

Before commencement of the project, Proliance Surgeons, Inc. must provide to the department for review and approval a copy of the revised Admissions Policy for Evergreen Orthopedic Surgery Center. The revised policy must include language ensuring all patients, including low-income, racial and ethnic minorities, handicapped and other underserved groups would have access to surgical services.

Provided that the applicant agrees to the term outlined above, a Certificate of Need would be issued with the conditions below:

1. Proliance Surgeons, Inc. will ensure that Evergreen Orthopedic Surgery Center will provide charity care in compliance with the charity care policies provided in its Certificate of Need application and the requirements of the applicable law. Evergreen Orthopedic Surgery Center will use reasonable efforts to provide charity care in an amount comparable to the average amount of charity care provided by the hospitals located in the east King planning area during the three most recent years. For historical years 2002-2004, these amounts are 1.15% of gross revenues and 1.85% of adjusted revenues. Evergreen Orthopedic Surgery Center will maintain records documenting the amount of charity care it provides and demonstrating its compliance with its charity care policies and applicable law.
2. Proliance Surgeons, Inc. will report to the Certificate of Need Program by March 31 of each year the amount of charity care provided at Evergreen Orthopedic Surgery Center during the previous calendar year.
3. Evergreen Orthopedic Surgery Center will maintain its participation in the Medicaid Program by maintaining its existing contract with Department of Social and Health Services.

The facility, Evergreen Orthopedic Surgery Center, is located in the east King planning area. There is no capital expenditure associated with this project.

A. Need (WAC 246-310-210)

Based on the source information reviewed and subject to the term and conditions identified within this evaluation, the department determines that the application is consistent with the applicable need criteria in WAC 246-310-210.

- (1) The population served or to be served has need for the project and other services and facilities of the type proposed are not or will not be sufficiently available or accessible to meet that need

The Department of Health's Certificate of Need Program uses the numeric methodology found in WAC 246-310-270 for determining the need for additional ASCs in Washington State. The numeric methodology provides a basis of comparison of existing operating room (OR) capacity for both outpatient and inpatient OR's in a planning area using the current utilization of existing providers. The methodology separates Washington State into 54 separate secondary health services planning areas. The exempt ASC, which will not relocate, is currently located in the city of Kirkland, within the East King planning area.

The numeric methodology estimates OR need in a planning area using multi-steps as defined in WAC 246-310-270(9). This methodology relies on several variables: surgical use rates in the planning area, projected population of the planning area, existing supply of OR capacity, and the average times of inpatient and outpatient surgeries in the area. Using these variables, the methodology determines existing capacity of dedicated outpatient and mixed-use operating rooms in the planning area, subtracts this capacity from the forecast number of surgeries to be expected in the planning area in the target year, and examines the difference to determine:

- a) whether a surplus or shortage of OR's is predicted to exist in the target year, and
- b) if a shortage of OR's is predicted, the shortage of dedicated outpatient and mixed-use rooms are calculated.

To determine need for additional ORs in the planning area under WAC 246-310-270, the applicant relied on the variables or assumptions shown below.

Variables/Assumptions	Data Used
Planning Area	East King County, resulting in 48.16% of the total King County population.
Population Estimates and Forecasts/Target Year	Using OFM population data released January 2000 and based on target year 2008.
Use Rate	Based on 1994 FASCAW ⁴ data, the use rate of 102/1,000 was applied to year 2005 and the projected 2008 population in the planning area identified above.
Percent of surgery: ambulatory vs. inpatient	72.3% ambulatory setting; 27.8% inpatient setting
Average minutes per case	Outpatient cases = 50 minutes; inpatient cases 100 minutes
Annual OR capacity in minutes	68,850 outpatient surgery minutes; 94,250 inpatient or mixed-use surgery minutes

⁴ Freestanding Ambulatory Surgery Centers of Washington, a nonprofit organization founded in 1993. More information can be found at www.fascaw.org

The applicant's methodology resulted in a projected need for 3.5 mixed-use ORs and 30.2 dedicated outpatient ORs for year 2009. [Source: Application, pp17-25; Attachments II-2, IV-1, IV-3, IV-4, & IV-5]

The exempt ASC is currently located in the East King planning area. There are thirty-two providers in the planning area--three hospitals and twenty-nine ASCs. The thirty-two providers are listed below. [source: CN historical files-Facilities and Services Licensing database]

Table I
East King Planning Area Providers

Hospital/City	ASC/City
Evergreen Hospital Medical Center, Kirkland	Foot Surgical Center of Issaquah, Issaquah
Overlake Hospital Medical Center, Bellevue	Henri P. Gaboriau, MD, Sammamish
Snoqualmie Valley Hospital, Snoqualmie	Issaquah Surgery Center, Issaquah
	Northwest Nasal Sinus Center, Kirkland
	Overlake Ambulatory Surgical Center, Bellevue
	Overlake Surgery Center, Bellevue
	Pacific Cataract and Laser Institute, Bellevue
	Redmond Foot Care Associates ASC, Redmond
	Remington Plastic Surgery, Kirkland
ASC/City	
Aesthetic Eye Associates ASC, Kirkland	
Bellevue Urology Associates, Bellevue	
Center for Plastic Surgery, Bellevue	
Cosmetic Surgery & Dermatology of Issaquah, Issaquah	
Eastside Endoscopy Center, Bellevue	Sam Naficy, MD, Bellevue
Eastside Podiatry ASC, Bellevue	Swedish Health Services Issaquah ASC, Issaquah
	Skin Surgery Center, Bellevue
Eastside Urology ASC, Kirkland	Specialty Eyecare Center, Bellevue
Elan Plastic Surgery Center, Kirkland	Virginia Mason – Issaquah, Issaquah
Evergreen Endoscopy Center, Kirkland	Virginia Mason – Kirkland, Kirkland
Evergreen Orthopedic Surgery Center, Kirkland	
Evergreen Surgery Center, Kirkland	Washington Center for Reproductive Medicine ASC, Bellevue
Evergreen Surgical Clinic, Kirkland	Washington Sports Medicine Associates, Kirkland

As shown in Table I above, the thirty-two facilities include three hospitals and twenty-nine ASCs, including the ASC associated with this project. The hospitals have both inpatient and outpatient capacity, and the ORs will be included in the count of OR capacity in the East King planning area.

Of the 29 ASCs listed in Table IV, 24 of the facilities are located within a solo or group practice. The use of these ASCs is restricted to physicians that are employees or members of the clinical practices that operate the facilities. These 24 facilities do not meet the ASC definition found in WAC 246-310-010 and therefore are not counted in the supply of available ORs. The remaining ASCs: Evergreen Surgery Center (ESC), Overlake Surgery Center (OSC), Northwest Nasal Sinus Center (NWNSC), Swedish Health Services (SHS) and Issaquah Surgery Center (ISC) were awarded Certificates of Need (CN) for operate freestanding ASCs: ESC in 1981, OSC in 1999, NWNSC in 2002, and SHS and ISC in 2006.

To assist in its application of the numeric methodology for this project, in July 2006, the department requested utilization information from each of the thirty-two facilities identified above. Responses

were received from two of the hospitals,⁵ three of the CN-holding ASCs,⁶ and ten of the twenty-four exempt ASCs.⁷ Additionally, the applicant's data provided in the application was used to apply the numeric methodology.

The department also relied on the following variables/assumptions to apply its methodology:

Variables/Assumptions	Data Used
Planning Area	East King County, resulting in 48.16% of the total King County population.
Population Estimates and Forecasts/Target Year	Using OFM population data released June 29, 2006 and based on target year 2009.
Use Rate	Based on completed utilization surveys in the planning area, the use rate of 89.063/1,000 was applied to year 2005 and projected 2009 population in the planning area.
Percent of surgery: ambulatory vs. inpatient	Based on utilization surveys in the planning area, 71.17% ambulatory setting; 28.83% inpatient setting based
Average minutes per case	Based on utilization surveys in the planning area, Outpatient cases = 89.57 minutes; inpatient cases 113.50 minutes
Annual OR capacity in minutes	68,850 outpatient surgery minutes; 94,250 inpatient or mixed-use surgery minutes

Using the variables and assumptions above and the department's count of available ORs in the East King planning area, the department's application of the numeric methodology indicates no need for additional mixed use ORs and a shortage of 21.95 outpatient ORs for the planning area in year 2009.⁸

When comparing the applicant's projections (need for 3.5 mixed use ORs and 30.23 dedicated outpatient ORs) and the department's projections, the difference in results can be attributed to the following three factors discussed below.

1) Population Estimates/Forecasts

In this application, EOSC offered estimates of East King planning area population as 48.13% of King County population. In its comments opposing this project, EHMC noted that the population estimates contained in this application are significantly higher than the populations attributed to the East King planning area in recent years. EHMC provided a table detailing projected populations for this planning area in the most recent four years, projecting as far in the future as 2011, none of which estimated the East King population to exceed 565,000. In rebuttal, EOSC explained the basis it used for projecting planning area population:

“...the methodology applied by the applicant is one their consultant, Strategic Ancillaries, has used on several occasions where no boundaries are available when defining a given population in

⁵ Evergreen Healthcare and Overlake Hospital and Medical Center

⁶ ESC, OSC, and NWNCS

⁷ EOSC (the applicant), Remington Plastic Surgery, Skin Surgery Center, Virginia Mason Issaquah ASC, Evergreen Endoscopy, Eastside Urology Associates, Evergreen Surgical Clinic, Naficy Plastic Surgery, Bellevue Urology, Sammamish Center for Facial Plastic Surgery

⁸ The department's numeric methodology is Appendix A attached to this evaluation.

a secondary planning area. This time-tested process involves the use of the patient origination zip-code data from the existing facility.”

The department disagrees with the applicant that “no boundaries are available” for defining the East King planning area. As noted by EHMC, the East King planning area has been successfully described in at least five recent CN cases, using historical CN documents. The department concludes that more proper population estimates for East King were found in Proliance’s recently-approved application requesting approval of a new ASC in Issaquah, also in the East King planning area. That application identified the 2000 population of East King as approximately 28.1% of the entire King County population, with a 2009 population of 532,996. Using that ratio, the estimated 2005 population of the East King planning area would be approximately 508,063.

2) Use Rate

The use rate used by the applicant in its projections is based on 1994 FASCAW data; the use rate of 102/1,000 was applied to the projected 2009 population results in the planning area.

The use rate of surgical facilities in a planning area is a computation based on two inputs –the number of residents of a planning area, and the number of surgeries performed in that planning area. As noted above, the department disagrees with the applicant on the population of East King. In order to calculate use rate, the department’s surveys of existing providers are intended to provide the second necessary input. In the current case, fewer than half the existing providers of surgical services provided responses. Even with this limited response, the department calculated a use rate of 89.063 surgeries per 1,000 area residents in 2005.

3) Average Minutes per Case

The applicant used the default average minutes per case stated within the methodology. This default—50 minutes per outpatient and 100 minutes per inpatient—is used when data is unavailable. Based on utilization survey results provided by the providers in the East King planning area, the department used 89.57 minutes per outpatient and 113.5 per inpatient.

In summary, the department’s methodology using the above assumptions indicates no need for additional mixed use ORs and a shortage of 21.95 outpatient ORs for the East King planning area in year 2009.

The department recognizes the use rate of 89.063/1,000 is lower than other use rates it has applied in previous applications in the same planning area. The chart below shows a summary of the recent applications reviewed by the department and the use rate applied to the service area based on completed utilization surveys.

Decision Date	Name of Facility	Service Area	Use Rate / 1,000
05/12/06	Issaquah Surgery Center	East King	102
05/12/06	Swedish Health Services	East King	102
07/31/06	Skagit Island Orthopedic Surgery Center	East Skagit	114.59
08/22/06	West Tacoma Surgery Center	Central Pierce	88.69

As a result, the department concludes that the use rate of 89.063/1,000 probably understates the actual use rate in the service area. The department also applied the use rate of 102/1,000 used by PS, Inc.

within the application. Results of that methodology show no need for additional mixed-use ORs and a shortage of 28.04 outpatient ORs.

Given that the response rate related to the utilization surveys used for this application and the use rates used in previous ASC applications, the department concludes that the 89.063/1,000 use rate in the East King planning area likely understates actual utilization. The department attributes the 89.063/1,000 use rate to the low survey responses submitted by the existing providers. In summary, the department concludes that the shortage of outpatient ORs in the planning area would be at least 21.95 based on the 89.063 use rate, and could be as high as 28.04, using the 102/1,000 use rate.

Information within the application and data reviewed by the department indicates that need for additional OR capacity in the east King planning area has been demonstrated. Based on information provided within the application, this sub-criterion is met.

- (2) All residents of the service area, including low-income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups and the elderly are likely to have adequate access to the proposed health service or services.

As previously stated, PS, Inc owns and/or operates six ASCs in Washington State. Through these ASCs, PS, Inc has provided health care services to residents of the respective service areas. To demonstrate compliance with this criterion, the applicant provided a copy of EOSC's Admissions Policy, Patient's Rights and Responsibilities Policy, and Charity Care Policy [sources: as noted] The department's review of all three policies follows:

Admissions Policy [source: Application, Attachment III-3]

The Admission Policy outlines the process that the surgical center will use to admit patients and provides the overall guiding principles of the ASC as to the types of patients that are appropriate candidates to use the ASC. It also intended to ensure that patients will receive the appropriate surgical intervention at the ASC. The department concludes that the information contained in this policy appropriately identifies the types of patients that would be eligible for services at the ASC and prerequisites the patient must meet before having a procedure at the proposed ASC. Omitted from this document is the assurance that all patients, including low-income, racial and ethnic minorities, handicapped and other underserved groups would have access to surgical services. If this project is approved, the department would attach a term to the approval requiring PS, Inc. to submit a revised Admission Policy for EOSC with the required language that ensures all patients, including low-income, racial and ethnic minorities, handicapped and other underserved groups would have access to surgical services. Additionally, the department expects PS, Inc. to maintain those assurances regardless of any future modifications to the policy.

Patient's Rights and Responsibilities Policy [source: May 25, 2006, supplemental information, Attachment 1]

This policy ensures the patient's ability to receive confidential care and treatment appropriate to the diagnosis, and the ability to participate actively in decisions regarding medical care provided. The policy also ensures that all patients would be admitted to the ASC without regard to age, race, color, religion, sex, national origin, handicap, or sexual preference and will be treated with respect and dignity.

Charity Care Policy [source: May 25, 2006, supplemental information, Attachment 3]

The Charity Care Policy provided in the application outlines the process to be used for patients to access financial assistance to pay for services provided at the ASC.

To determine whether low income residents would have access to the ASC, the department uses the facility's Medicaid eligibility or contracting with Medicaid as the measure. Documentation provided in the application indicates that the six PS, Inc. practices that currently operate an exempt ASC may elect to participate in the Medicaid program even though the larger PS, Inc. does not. Information provided by the applicant indicates that EOSC established its Medicaid contract in March of 2006. Further, within the application, PS, Inc. provided the projected sources of revenues at EOSC, which includes Medicare and Medicaid as revenue sources. Given that PS, Inc.'s general position is not to contract with Medicaid, if this project is approved, the department would attach a condition to the approval requiring Evergreen Orthopedic Surgery Center to maintain its Medicaid participation. [source: April 17, 2006, supplemental information, p4; May 2, 2006, supplemental information, Attachment 2]

WAC 246-310-270(7) states that ASCs shall implement policies to provide access to individuals unable to pay consistent with charity care levels reported by the hospitals affected by the proposed ASC. For charity care reporting purposes, the Department of Health's Office of Hospital and Patient Data Systems (OHPDS), divides Washington State into five regions: King County, Puget Sound (less King County), Southwest, Central, and Eastern. EOSC is located in the East King planning area within the King County Region.

There are 20 existing hospitals currently operating within the Puget Sound Region, and of those, three hospitals are located in the East King planning area that would be affected by the proposed ASC—Evergreen Healthcare in Kirkland, Overlake Hospital and Medical Center in Bellevue, and Snoqualmie Valley Hospital in Snoqualmie. For this project, the department reviewed charity care data for 19 of the 20 hospitals in the region and the three hospitals located in the planning area⁹. The tables below show the 2002 - 2004 historical charity care percentages for the King County Region, existing East King hospitals, and the applicant's projected charity care percentages. [source: OHPDS 2002 - 2004 charity care data and Application, p12]

Tables II
Years 2002 - 2004 King County Region-Charity Care Percentages

Year	Percentage of Total Revenue	Percentage of Adjusted Revenue
2002	1.21%	2.17%
2003	0.95%	1.71%
2004	0.77%	1.34%
3 Year Average	.098%	1.74%

Years 2002 - 2004 East King Hospitals-Charity Care Percentages

Year	Percentage of Total Revenue	Percentage of Adjusted Revenue
2002	1.31%	2.15%
2003	1.20%	1.94%
2004	0.93%	1.45%
3 Year Average	1.15%	1.85 %

⁹ Harborview Medical Center, also located in King County, is excluded from these calculations because of the disproportionate share of charitable care it provides as a result of its mission.

Applicant's Projected Charity Care Percentages

Years	Percentage of Total Revenue	Percentage of Adjusted Revenue
2006-2009	3.00%	6.5%

As shown above, the applicant's pro formas indicate that the ASC will provide charity care at approximately 3% of gross revenue, and 6.5% of adjusted revenue. [source: Application, p12] The projected averages are better than the average charity care provided in the King County Region, and better than the three-year average provided by the East King hospitals for historical years 2002-2004. To ensure the applicant would continue to meet its charity care obligations as required in WAC 246-310-270, if this project is approved, the department concludes that a condition related to the charity care to be provided at the ASC is necessary.

In summary, the department concludes that any approval of this project must include the following term related to the admission policy:

Before commencement of the project, Proliance Surgeons, Inc. must provide to the department for review and approval a copy of the revised Admissions Policy for Evergreen Orthopedic Surgery Center. The revised policy must include language ensuring all patients, including low-income, racial and ethnic minorities, handicapped and other underserved groups would have access to surgical services.

Additionally, the department concludes that any approval of this project must include the conditions identified below:

1. Proliance Surgeons, Inc. will ensure that Evergreen Orthopedic Surgery Center will provide charity care in compliance with the charity care policies provided in its Certificate of Need application and the requirements of the applicable law. Evergreen Orthopedic Surgery Center will use reasonable efforts to provide charity care in an amount comparable to the average amount of charity care provided by the hospitals located in the east King planning area during the three most recent years. For historical years 2002-2004, these amounts are 1.15% of gross revenues and 1.85% of adjusted revenues. Evergreen Orthopedic Surgery Center will maintain records documenting the amount of charity care it provides and demonstrating its compliance with its charity care policies and applicable law.
2. Proliance Surgeons, Inc. will report to the Certificate of Need Program by March 31 of each year the amount of charity care provided at Evergreen Orthopedic Surgery Center during the previous calendar year.
3. Evergreen Orthopedic Surgery Center will maintain its participation in the Medicaid Program by maintaining its existing contract with Department of Socials and Health Services.

Provided the applicant agrees to the above term and conditions, this sub-criterion is considered met.

B. Financial Feasibility (WAC 246-310-220)

Based on the source information reviewed and subject to the term and conditions identified within this evaluation, the department determines that the application is consistent with the applicable financial feasibility criteria in WAC 246-310-220.

(1) The immediate and long-range capital and operating costs of the project can be met.

Historical CN files confirm that EOSC became operational as an exempt ASC in July 2003. Table III below shows the historical and projected number of surgeries performed at the ASC. [source: application, p22; June 12, 2006, screening responses, p2]

Table III
Evergreen Orthopedic Surgery Center
Historical Number of Surgeries by Type

	Year 2003	Year 2004	Year 2005
Orthopedic	1,343	3,266	3,566
Pain			
Totals	1,343	3,266	3,566

Projected Number of Surgeries by Type

	Year 2006*	Year 1 (2007)	Year 2 (2008)	Year 3 (2009)
Orthopedic	2,491	3,617	3,708	3,807
Pain	60	240	264	290
Totals	2,551	3,857	3,972	4,097

*Year 2006 is a combination of January-May actual volumes with June-December projected volumes

In its initial application, PS projected annual increases in utilization of approximately 5%. The applicant provided the following rationale for those projections:

“...utilization forecasts were based on actual surgical volumes for the first three years of operation, 2003-2005. As the practices mature for the new providers joining the Group, use rates are expected to increase by a minimum of 5% per year...Already this project has attracted 3 new providers for a total of 13 surgeons. For purposes of the utilization forecast, no outside surgical volumes were used. It is expected however; that once the CN is granted, there will be significant interest by area orthopods and podiatrist, outside the Proliance Group, who will want to use this facility.”

[source: Application, p23]

In its June 12, 2006 screening responses, PS revised its utilization projections downward slightly to account for the approval of two additional ASCs in the planning area after this application was submitted. As shown in Table III, PS projects annual increases in the total projected number of surgeries from year one through year three of approximately 3%. Based on EOSC's historical performance and the department's need calculations, the department concludes these projections are reasonable.

To determine whether the ASC would meet its immediate and long range operating costs, the department evaluated EOSC's projected balance sheets through the project's third full year of

operation (2009). A summary of the balance sheets for the ASC's first three full years of operation is shown below: [source: Application, Attachment IV-9]

Tables IV
Evergreen Orthopedic Surgery Center
Balance Sheets for Years 2007-2009
Year 2007

Assets		Liabilities	
Current Assets	\$ 510,000	Current Liabilities	\$ 6,000
Fixed Assets (net of accumulated depr.)	12,288	Other Liabilities (long term debt)	0
Other Assets	0	Total Liabilities	\$ 6,000
Total Assets	\$ 522,288	Equity	\$ 516,288
		Total Liabilities and Equity	\$ 522,288

Year 2008

Assets		Liabilities	
Current Assets	\$ 517,000	Current Liabilities	\$ 7,500
Fixed Assets (net of accumulated depr.)	4,772	Other Liabilities (long term debt)	0
Other Assets	0	Total Liabilities	\$ 7,500
Total Assets	\$521,772	Equity	514,272
		Total Liabilities and Equity	\$521,772

Year 2009

Assets		Liabilities	
Current Assets	\$ 524,000	Current Liabilities	\$ 10,000
Fixed Assets (net of accumulated depr.)	0	Other Liabilities (long term debt)	0
Other Assets	0	Total Liabilities	\$10,000
Total Assets	\$524,000	Equity	514,000
		Total Liabilities and Equity	\$ 524,000

Based on the projected balance sheets, it is clear that EOSC would be a financially stable ASC. Further, a review of the balance sheets provided in the application indicates that the ASC intends to acquire no long term debt for this project.

Based on the financial information above, the department concludes that the long-term capital and operating costs of this project can be met, and this sub-criterion is met.

- (2) The costs of the project, including any construction costs, will probably not result in an unreasonable impact on the costs and charges for health services.

Table V on the following page details the projected revenues and expenses for EOSC's first three full years of operation based on the projected number of surgeries shown in Table III of this evaluation. [source: application, Appendix IV-6; June 10, 2006, supplemental information]

Table V
Evergreen Orthopedic Surgery Center
Revenue and Expense Summary Projected Years 2007 through 2009

	Full Year 1 (2007)	Full Year 2 (2008)	Full Year 3 (2009)
# of Surgeries	3,857	3,972	4,091
Net Patient Revenue*	\$ 5,711,869	\$ 5,883,223	\$ 6,059,724
Total Expense	\$ 4,114,024	\$ 4,278,641	\$ 4,451,317
Net Profit or (Loss)	\$ 1,597,845	\$ 1,604,582	\$ 1,608,407
Net Revenue per Surgery	\$ 1,480.91	\$ 1,481.17	\$ 1,481.23
Total Expenses per Surgery	\$ 1,066.64	\$ 1,077.20	\$ 1,088.08
Net Profit or (Loss) per Surgery	\$ 414.27	\$ 403.97	\$ 393.16

*Includes deductions for bad debt, charity care, and contractual write-offs

As noted in Table V, the ASC would be operating at a profit through the first three years of operation; while the net profit decreases in each of those three years, it is not a substantial decrease.

In addition to the pro forma projections provided above, PS, Inc also provided the following statements related to the assumptions used as a basis for the projections at the ASC: [source: Application, p23]

“The variables used in projecting surgical needs were: 1) use rates; 2) additional/retiring providers.

Use Rates As noted above, utilization forecasts were based on actual surgical volumes for the facility for the first three years of operation, 2003-2005. As the practices mature for the new providers joining the Group, use rates are expected to increase by a minimum of 5% per year.

Additional Providers With growing population comes additional providers. Already this project has attracted 3 new providers for a total of 13 surgeons. For purposes of the utilization forecast, no outside surgical volumes were used. It is expected however; that once the CN is granted, there will be significant interest by area orthopods and podiatrist, outside the Proliance Group, who will want to use this facility.”

Documents provided in the application, indicate that the Evergreen Orthopedic Surgery Center would offer orthopedic and pain management surgeries. CN program staff compared the projected costs and charges above to those of recent ASC applications. That comparison reveals that the costs and charges identified above are comparable to those shown in like-type ASC applications.

Based on the information provided above, the department concludes that the cost of the project will not result in an unreasonable impact on the costs and charges for health services within the service area. This sub-criterion is met.

C. Structure and Process (Quality) of Care (WAC 246-310-230)

Based on the source information reviewed and subject to the term and conditions identified within this evaluation, the department determines that the application is consistent with the applicable structure and process (quality) of care criteria in WAC 246-310-230.

- (1) A sufficient supply of qualified staff for the project, including both health personnel and management personnel, are available or can be recruited.

Given that the ASC is currently operating, the applicant anticipates only small increases in staff for to accommodate the growth anticipated with this project. Staff increases are based on the projected increase in surgeries at the ASC. Table VI below summarizes the current and projected staffing of EOSC. [source: May 25, 2006, screening responses]

Table VI
Evergreen Orthopedic Surgery Center
Current and Projected Staffing

Current and Projected Staffing	Current	Year 1 - Increase	Year 2 – Increase	Year 3 - Increase	Total
Business Office Manager	0	0	1	0	1
Nursing Manager	1	0	0	0	1
Charge Nurse	0	0	0	1	1
RNs	9.75	2	1.25	.5	13.5
Surgical Tech	3.5	.5	0	.5	4.5
Instrument Tech	1	.5	.5	0	2
Billing	1.25	.25	.5	0	2
Patient Registration	1.75	.25	0	0	2
Coding	.5	.25	.25	0	1
Materials	1	0	0	0	1
Total FTEs	19.75	3.75	3.5	2	29

As shown above in Table VI, the applicant anticipates a small increase in FTEs in each of the first three years if this project is approved. The applicant also states that it has been able to recruit skilled employees because the outpatient environment does not require shift work and 24/7 staffing. [source: Application, p28]

Because PS, Inc will continue to have ownership in the facility, it is a reasonable assumption that many, if not all, of the current staff of the ASC will remain employed by the ASC if this project is approved. The department concludes that it is reasonable and prudent for the applicant to maintain current staff of the exempt ASC to ensure adequate staffing.

Based on the information provided in the application, the department concludes that PS, Inc provided a comprehensive approach to recruit and retain staff necessary for the ASC. This sub-criterion is met.

- (2) The proposed service(s) will have an appropriate relationship, including organizational relationship, to ancillary and support services, and ancillary and support services will be sufficient to support any health services included in the proposed project.

Given that EOSC is currently operating as an exempt ASC, ancillary and support agreements are already in place. To demonstrate compliance with this sub-criterion, the applicant provided copies of

its existing service contracts and/or agreements. Below is a summary of the types of agreements provided: [source: Application, Attachments IV-10, III-4, & III-6; May 10, 2006 screening responses]

- Ancillary Service Agreements, including equipment, anesthesia, linen, medical waste, and pharmaceutical
- Patient Transportation Agreements w/ local medical transportation companies
- Medical Director Job Description (not a contracted or compensated position)
- Transfer agreement with Evergreen Healthcare

After reviewing the documents above, the department concludes that the applicant has demonstrated compliance with this sub-criterion. This sub-criterion is met.

- (3) There is reasonable assurance that the project will be in conformance with applicable state licensing requirements and, if the applicant is or plans to be certified under the Medicaid or Medicare program, with the applicable conditions of participation related to those programs.

As stated in the project description portion of this evaluation, the applicant, PS, Inc., operates six ASCs, including the ASC associated with this project. The Department of Health's Office of Health Care Survey (OHCS), which surveys ASCs within Washington State, has completed a total of eleven compliance surveys for the PS, Inc. facilities.¹⁰ Of the six facilities, three had no deficiencies and three were cited for minor non-compliance issues. The non-compliance issues were typical for the type of facility and PS, Inc. submitted a plan of corrections and implemented the required corrections. [source: compliance survey data provided by Office of Health Care Survey]

James R. Robbins, MD is the current medical director for the ASC. PS, Inc. states this position is neither contracted, nor compensated. The physician owners of EOSC agree to share the medical director responsibilities among themselves. To demonstrate compliance with this sub-criterion, PS, Inc. provided a copy of the job description outlining the duties of the medical director and a listing of current credentialed or licensed staff of the ASC. The Department of Health's Health Professions Quality Assurance Division credentials all staff in Washington State. A review of the compliance history for all medical staff associated with the ASC reveals recorded sanctions for one, Craig McAllister, MD. Dr. McAllister disclosed in the application that he had been the subject of an "informal disposition" agreement with the Department of Health as the result of a complaint against him in 2003. The program researched the details of Dr. McAllister's agreement and obtained verification from the department's Medical Quality Assurance Commission that all terms of the agreement had been met and Dr. McAllister is no longer bound by any agreements or stipulations with the department. [source: compliance history provided by Health Professions Quality Assurance Division]

Given the compliance history of all of the ASCs owned and/or operated by PS, Inc and the compliance history of the staff currently associated with the ASC, there is reasonable assurance that PS, Inc. would continue to operate the ASC in conformance with applicable state and federal licensing and certification requirements. This sub-criterion is met.

¹⁰ Surveys conducted: Evergreen Orthopedic Surgery Center-2003; Evergreen Surgical Clinic-1994, 1998, and 2002; Issaquah Surgery Center-2004; Valley Orthopedic Associates Surgery Center-1999 and 2005; Edmonds Center for Outpatient Surgery-1992, 1996, and 2003; Skagit Island Orthopedic Surgery Center-2003.

- (4) The proposed project will promote continuity in the provision of health care, not result in an unwarranted fragmentation of services, and have an appropriate relationship to the service area's existing health care system.

As noted earlier in this evaluation, the existing ASC is already operating as an exempt ASC; therefore, EOSC already has established relationships with the existing health care system.

As previously stated in the need section of this evaluation, documentation provided in the application verifies that EOSC established its Medicaid contract in 2006. Given that PS, Inc.'s general position is not to contract with Medicaid, the department concluded that any approval of this project would include a condition requiring EOSC to maintain its Medicaid participation.

After reviewing the information above, the department concludes that the applicant demonstrated its existing relationships with ancillary and support services for the health care services are appropriate. Additionally, the applicant currently meets all of the necessary documentation required for the operation and management of the ASC. With the applicant's agreement to the condition requiring EOSC to maintain its Medicaid participation, approval of this project would not result in an unwarranted fragmentation of services, and this sub-criterion would be met.

- (5) There is reasonable assurance that the services to be provided through the proposed project will be provided in a manner that ensures safe and adequate care to the public to be served and in accord with applicable federal and state laws, rules, and regulations.

This sub-criterion is evaluated in sub-section (3) above, and based on that evaluation, the department concludes that this sub-criterion is met.

D. Cost Containment (WAC 246-310-240)

Based on the source information reviewed and subject to the term and conditions identified within this evaluation, the department determines that the application is consistent with the applicable cost containment criteria in WAC 246-310-240.

- (1) Superior alternatives, in terms of cost, efficiency, or effectiveness, are not available or practicable.

The applicant states that its decision to proceed with this project was made after reviewing several key criteria and determining that the project was warranted. Key considerations identified by the applicant and related to this sub-criterion are restated below:

- Cost - ...dramatically increasing patient costs, such as premiums and co-pays, are forcing today's healthcare consumers to seek more cost-effective alternatives. The increased availability of "Part B" outpatient facilities can represent significant savings to the consumer.
- Availability – ...the availability of this type of facility, an "Orthopedic Institute," is simply not available to residents on the East side. Developing a facility of this type was one of the key elements in the decision to move forward with this project.
- Joint Venture – Prior to this project, the Applicant (spent) considerable time and money trying to reach accord with Evergreen Hospital on a possible joint venture. While both parties negotiated in good-faith, ultimately, the cultural differences and the proposed economics drove the Applicant to seek other alternatives.
- Legal Restrictions - The applicant has reviewed this project from a variety of legal perspectives. At the Federal level, the recent establishment of the "safe-harbor" for physician owned surgery

center would almost appear to encourage the development of these facilities. [source: Application, pp31-32]

In the need portion of this evaluation, the department concluded that PS, Inc. demonstrated need for the additional ORs, and the project met the criteria within financial feasibility and structure and process of care.

In summary, the department concludes that the applicant chose the one of the best available options for the patients and the community. Based on the information provided above, the department concludes that this project is consistent with this sub-criterion.